

# Law and Justice Interim Committee



Staff Summary of the  
Activities of the  
2015 – 2016 Law and Justice  
Interim Committee

June 2017

## Members of the 2015 – 2016 Law and Justice Interim Committee

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Law and Justice Interim Committee, like most other interim committees, serve one 20-month term. Members who are re-elected to the Legislature may serve again on an interim committee.\*

**Senator Scott Sales, Chair**

PO Box 11163  
Bozeman, MT 59719-1163  
406-579-7994

**Senator Doug Kary**

415 W Wicks Lane  
Billings, MT 59105-3457  
406-698-1478

**Senator Sue Malek**

1400 Prairie Way  
Missoula, MT 59802-3420  
406-370-2424

**Senator Mary Moe**

8 Prospect Drive  
Great Falls, MT 59405-4120  
406-868-9427

**Senator Diane Sands, Vice Chair**

4487 Nicole Court  
Missoula, MT 59803-2791  
406-251-2001

**Senator Nels Swandal**

PO Box 147  
Wilsall, MT 59086-0147  
406-578-2319

**Representative Jenny Eck**

PO Box 1206  
Helena, MT 59624-1206  
406-459-1082

**Representative Ellie Hill Smith**

501 Daly Avenue  
Missoula, MT 59801-4412  
406-218-9608

**Representative Sarah Laszloffy**

716A Sypes Canyon Road  
Bozeman, MT 59715-9357  
406-530-7013

**Representative Steve Lavin**

PO Box 11241  
Kalispell, MT 59904-4241  
406-212-3820

**Representative Dale Mortensen**

446 Caravan Avenue  
Billings, MT 59105-2839  
406-855-1424

**Representative Carolyn Pease-Lopez**

5723 US Highway 87 E  
Billings, MT 59101-9074  
406-245-2265

\* This information is included in order to comply with section 2-15-155, MCA.

**Committee Staff**

Rachel Weiss, Research Analyst  
Julianne Burkhardt, Staff Attorney  
Joy Lewis, Kristina Liming, and Laura Sherley, Secretaries

**Legislative Services Division**

Susan Byorth Fox, Executive Director  
Todd Everts, Director, Legal Services  
David D. Bohyer, Director, Office of Research and Policy Analysis (retired July 2016)



## Contents

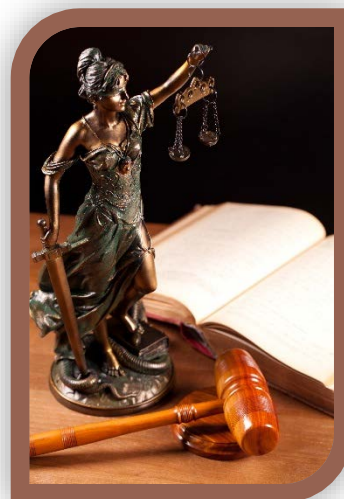
Members of the 2015 – 2016 Law and Justice Interim Committee	1
Contents .....	3
Introduction and Overview .....	4
<i>Further Information</i> .....	5
SJ 24: Study Sexual Assault in Montana.....	6
<i>Background</i> .....	6
<i>Taking Center Stage</i> .....	7
<i>Additional Information</i> .....	8
<i>Suggesting Change</i> .....	9
<i>Wrapping Up</i> .....	9
<i>Tracking the Results</i> .....	10
Agency Oversight and Committee Topics.....	11
<i>Agency Oversight</i> .....	11
<i>Issues of Importance to the Committee</i> .....	11
Appendix A: Summary of SJ 24 Presentations .....	13
Appendix B: LJIC Letter of Support for DOJ Sexual Assault Evidence Task Force Grant Application .....	16



## Introduction and Overview

The Law and Justice Interim Committee devoted its time during the 2015-2016 interim to studying a wide swath of topics related to civil and criminal justice, including an in-depth look at laws and practices surrounding sexual assault crimes that occur in Montana.

As the interim committee responsible to liaise with the Judicial Branch and to oversee three justice-related executive branch agencies, the committee also conducted its routine oversight duties and provided an outlet for members of the public to comment about their experiences and interactions with these agencies.



Committee members focused the bulk of their meeting time to a study of sexual assault in Montana. Sponsored by the committee's vice presiding officer, the resolution (SJ 24) requested a broad look at the state's current laws and practices related to reporting, investigating, and prosecuting sexual crimes as well as those relating to services provided to victims and treatment provided to offenders.

Other subjects gaining the attention of the committee included:

- ❖ Frequent updates on the work of three other entities that were studying law and justice-related topics during the interim: the Commission on Sentencing, the Judicial Redistricting Commission, and the Task Force on State Public Defender Operations;
- ❖ Challenges posed to local governments by individuals who are intoxicated in public;
- ❖ Best practices for eyewitness identification (ie, photographic lineups);
- ❖ Attorney fees and court costs;
- ❖ Innocence commissions;
- ❖ The state's DNA database; and
- ❖ Offender programming at the Montana State Prison and private or regional prisons.

Committee members also visited two prisons, the Montana State Prison in Deer Lodge and the Crossroads Correctional Center in Shelby.

As a result of its work, the committee recommended seven bills to the 2017 Legislature, six of which were introduced. All seven bills were generated by the SJ 24 sexual assault

study. The committee also sent a letter to the Bureau of Justice Assistance in the United States Department of Justice to support a grant application from a sexual assault evidence task force created by the Montana attorney general.

**Further Information**

Audio and video recordings of each meeting, as well as agendas, meeting materials, summary minutes, and staff reports are available at the committee's website:

<http://leg.mt.gov/css/Committees/Interim/2015-2016/Law-and-Justice/default.asp>

## **SJ 24: Study Sexual Assault in Montana**

### **Background**

The 2015-2016 Law and Justice Interim Committee studied sexual assault in Montana at the request of the 2015 Legislature. Sen. Diane Sands (D-Missoula) sponsored Senate Joint Resolution 24 (SJ 24), which legislators ranked 7th out of 15 study resolutions in the postsession poll of interim studies.

The SJ 24 requested the committee consider a broad list of topics as part of the study:

- ❖ the current state and federal sexual assault statutes, including those governing the criminal justice process of investigating, charging, and sentencing of sexual assault-related crimes;
- ❖ current policies and practices of local, state, and university law enforcement agencies and of county attorneys that are related to investigating and prosecuting sexual assault crimes and whether the agencies and county attorneys have adequate resources to investigate and prosecute these crimes;
- ❖ societal attitudes and myths related to sexual assault, and education that might help the public to overcome these attitudes and myths;
- ❖ if, and to what extent, best-practices training is available to stakeholder agencies and sexual assault response units;
- ❖ best practices and policies for treatment, incarceration, registration, and supervision of sexual offenders and for treatment for victims;
- ❖ measures to improve understanding of the difficulties inherent in the criminal justice system in responding to sexual assault, measures to prevent sexual assaults, and education and/or tools to improve communities' responses to sexual assault;
- ❖ jurisdictional factors that hinder responses to sexual assault, including assaults on Indian reservations and Montana university campuses; and
- ❖ information-sharing and data-collection challenges related to the analysis of sexual assault in Montana.

At the committee's first meeting in June 2015, members listened to Montana Department of Justice (DOJ) staff explain existing statutes governing sexual crimes. Members then voted to dedicate 40% of their meeting time to the study. The committee also requested that committee staff and department staff work with several stakeholders to review the adequacy of Montana's sexual assault statutes and report back to the committee.

### Taking Center Stage

As to be expected with a lengthy list of study requests, the committee members spent hours compiling background information during the initial study stage. From September 2015 to February 2016, they listened to experts discuss crime statistics, produce case studies of recent prosecutions, review forensic examination protocols, and outline methods of providing services to victims.

The committee learned that tribal and state law enforcement data is not included in the main crime database that compiles local government data and that sexual crimes are typically underreported to law enforcement.

Going beyond reliance on data and statutes, the committee heard a case study from a county attorney that illustrated how laws are applied to an actual investigation and prosecution. The presentation highlighted the challenges that prosecutors, law enforcement officials, victims, and a community can face during that time. Later, a nurse who is trained to conduct medical forensic examinations of sexual assault victims teamed with a hospital administrator to discuss training requirements, the exam process, and challenges that victims and providers face, especially in rural areas.

Committee members also learned about crime victim services in Montana when a panel of service providers outlined different structures used by local governments and communities to provide support to sexual assault crime victims. The panelists also mentioned the funding available for those services, the needs of victims and the challenges they face, and the laws that protect victims' rights.

Multiple speakers, including the state's rape prevention coordinator and a state assistant attorney general, discussed "rape myths", or social perceptions of sexual assault and victims and how those perceptions can affect the reporting and prosecution of sexual crimes.

The committee also discovered the complexity that is added to the mix when sexual crimes occur in Indian Country or on Montana's college and university campuses. These cross-jurisdictional challenges were highlighted by an assistant U.S. attorney for the District of Montana and a tribal prosecutor as they discussed the numerous relevant federal laws that can overlap and make crime prosecution in Indian Country difficult at times. They also relayed the steps their offices are taking to better implement effective communication between federal agencies and the tribal governments, including resource sharing to improve responses to crime in general and sexual crimes in particular.

Campus officials, including law enforcement and Title IX coordinators, provided information and answered questions about recent efforts by Montana universities to



address sexual assault on campuses. Staff from the Office of the Commissioner of Higher Education also spoke about the adoption by the Montana University System (MUS) of systemwide best practices for responses to sexual assault, the sexual assault prevention and safe alcohol use training MUS requires of students, and the process used to enforce violations of student codes of conduct. The staff stressed the difference between the universities' responsibilities under the federal Title IX statutes to provide a safe educational environment and their responsibilities under the state's criminal laws and justice system.

The initial study phase also included a look at treatment for sex crime offenders. Sex offender treatment is often a sentencing requirement and can take place in prison or in the community. Treatment staff from the Montana State Prison explained to the committee the various phases of sex offender treatment, how and when offenders are required to take certain programs, and how the prison prioritizes its wait list for treatment.

Community providers continued the theme of sex offender treatment during a panel of treatment providers from across the state. Speakers reviewed how they interact with and treat sex offenders, effective treatment methods, psychosexual evaluations that the providers conduct on sex offenders, and the challenges that offenders face when reentering the community from prison.

Wrapping up the initial study phase was a morning-long presentation by Anne Munch, a former prosecutor from Colorado and an expert in helping the military, universities, and communities improve responses to sexual assault crimes. Munch served as the technical advisor to the Montana Department of Justice in its work with the Missoula community. During her presentation, Munch used examples of cases she prosecuted and situations she encountered to share with the committee how societal perceptions of sexual assault can affect attempts to revise the laws and policies on how sexual assaults are reported and prosecuted. She concluded by reviewing statistics on false reporting and suggested several state statutes or military codes that the committee could emulate if it chose to request legislation.

### **Additional Information**

In addition to the mountain of information the committee members gathered during the initial study steps, they also requested additional briefings on related topics including the state's sexual and violent offender registry and various local training programs that aim to prevent sexual assaults as well as educate middle and high-school students and teachers about sexual assault.

Education speakers highlighted the goals and structures of their programs and even demonstrated some techniques they use to help students identify and develop healthy peer and dating relationships, including consent.

The state's sexual and violent offender registry is maintained by the Department of Justice, whose staff spoke to committee members about the registry history and statistics, juvenile offenders who are listed in the registry, and the process used to set an offender's re-offense risk tier level.

This portion of the study also included information about recent revisions by the Office of Public Instruction to the health enhancement standards that are used by local schools to guide curriculum related to various health issues, including health relationships.

### **Suggesting Change**

In March 2016, the committee began to examine possible statutory changes. Earlier in the study, the members had requested that legal staff review the sexual assault statutes in depth and report back to the committee. As a follow up to the review, several panelists shared their views on statutory changes they felt the committee should consider recommending to the next legislature. The panelists ranged from a Missoula deputy county attorney who specializes in prosecuting sex crimes to a public defender to a victims' advocate who also helps sexual assault victims file civil cases. The draft language reviewed by the committee and panelists included a revision of the definition of the term "consent," the creation of an aggravated sexual intercourse without consent crime, and language that would criminalize an act known as "revenge porn".

As the spring of 2016 progressed, the committee continued to review and revise draft bill language to address issues of committee concern, including the consent and revenge porn drafts, statute of limitations for prosecution of sex crimes, statutory rape penalties, and termination of parental rights for children born after a rape occurs. The public and various stakeholders also reviewed the draft and provided comments to the committee members to ensure their perspectives on the issues were taken into account.

### **Wrapping Up**

In mid-August 2016, the committee took the final step to complete its interim work. After reviewing and taking comments on several bill drafts it had been revising throughout the interim, the committee voted to forward six drafts to the Legislature. It also heard an update from legal staff on a recent Montana Supreme Court ruling involving the incest statute. After the update, the committee chose to request a seventh bill related to that ruling.

### Tracking the Results

In all, the Law and Justice Interim Committee recommended seven bills for the 2017 Legislature.

Five of the seven bills became law. One bill, the revision of incest laws, was not introduced and thus died before it had a hearing. A second bill -- House Bill No. 129, the revision of laws relating to privacy in communications -- died during the legislative process.

The proposals are listed below by the official bill number that can be used to track the bill in the Legislature's bill tracking system, LAWS, as well as access audio-visual recordings of hearings and debated conducted about the bills by the 2017 Legislature.

LAWS is available at the legislative website: [www.leg.mt.gov](http://www.leg.mt.gov).

Bill Number	Short Title	Final Status
HB 129	Revising laws related to privacy in communications	Died in process
SB 17	Revise laws related to juvenile offenders and registration as sex offender	Enacted
SB 22	Revise laws re termination of parental rights when child is result of rape	Enacted
SB 26	Revise laws regarding sexual intercourse without consent	Enacted
SB 29	Revising laws regarding sexual crimes	Enacted
SB 30	Revise laws related to criminal statute of limitations	Enacted
LC0303	Revise incest laws	Draft canceled

## Agency Oversight and Committee Topics

### Agency Oversight

The Law and Justice Interim Committee also conducts interim oversight of the criminal-justice agencies assigned to it by law. Oversight includes reviewing administrative rules, hearing periodic reports and updates from agency staff, and requesting that agency legislation be drafted for the 2017 Legislature's consideration.

The committee is responsible for monitoring the interim activities of the Office of the State Public Defender, the Department of Corrections (DOC), and the Department of Justice (DOJ), as well as any entities that are attached to those agencies for administration purposes. The administrative entities that the committee must monitor are:

- ❖ the Board of Pardons and Parole (attached to DOC);
- ❖ the Board of Crime Control (attached to DOJ);
- ❖ the Gaming Advisory Council (attached to DOJ); and
- ❖ the Public Safety Officer Standards and Training (POST) Council (attached to DOJ).

The committee also serves as the liaison to the Judicial Branch.

At its organizational meeting, the committee voted to dedicate approximately 19 hours of meeting time to agency oversight, or approximately 30% of its time over the interim.

### Issues of Importance to the Committee

In addition to its agency oversight and study activity, the committee devoted another 30% of its interim meeting time to learn about issues highlighted by and of importance to individual committee members.

Committee topics included:

- ❖ Updates on three interim entities created by the 2015 Legislature to study various criminal-justice system topics: the HB 627 Task Force on Public Defender Operations, the SB 224 Commission on Sentencing, and the HB 430 Judicial Redistricting Commission.
- ❖ Public intoxication challenges facing local governments.
- ❖ Eyewitness identification best practices and law enforcement policies.
- ❖ Tours of the Crossroads Correctional Center in Shelby and the Montana State Prison in Deer Lodge.
- ❖ An overview of the DNA databases maintained or used by the Department of Justice.

- ❖ Offender programming at Montana State Prison and private or regional prisons.
- ❖ Attorney fees and court costs.
- ❖ Innocence commissions in other states.

The committee's study of these topics did not result in legislation.



## Appendix A: Summary of SJ 24 Presentations

The committee took testimony from multiple stakeholders during the course of the SJ 24 study. The following is a list of people who provided information during formal presentations.

### June 2015

#### General SJ 24 Topics

- ✓ Ole Olson, Assistant Attorney General, Montana Department of Justice (DOJ) – Update on oversight of agreement with Missoula County
- ✓ Jon Bennion, Deputy Attorney General, DOJ – Review of sexual assault statutes, department objectives and programs on sexual assault

### September 2015

#### General SJ 24 Topics

- ✓ Deb Matteucci, Executive Director, Board of Crime Control (BOCC) – Data on sexual assault
- ✓ Ole Olson, Assistant Attorney General, DOJ – Review of sexual assault statutes
- ✓ Bill Fulbright, Ravalli County Attorney – Case study on investigating and prosecuting sexual assault
- ✓ Tami Grewell, RN, and Dianna Linder, both Billings Clinic – Sexual assault medical forensic examinations

#### Resources and Best Practices Related to Treatment of Victims of Sexual Assault

- ✓ Tina Chamberlain, Grants Coordinator, BOCC
- ✓ Christina Powell, Executive Director, Bozeman Help Center
- ✓ Robin Turner, Public Policy and Legal Director, Montana Coalition Against Domestic and Sexual Violence

#### Myths Surrounding Sexual Assault

- ✓ Professor Kelly Parsley, Chair of Carroll College Health Sciences Department and Montana Department of Public Health and Human Services Rape Prevention Education Program coordinator
- ✓ Dan Guzynski, Assistant Attorney General, DOJ

#### Indian Country Jurisdictional Challenges

- ✓ Danna Jackson, Assistant U.S. Attorney for the District of Montana
- ✓ Yvonne Laird, Tribal Prosecutor/Special Assistant U.S. Attorney, Fort Belknap Indian Community

## College and University Jurisdictional Challenges

- ✓ Chief Marty Ludemann, UM-Missoula Campus Police
- ✓ Jessica Weltman, JD, Director and Title IX Coordinator, UM-Missoula Office of Equal Employment Opportunity and Affirmative Action
- ✓ Chief Robert Putzke, MSU-Bozeman Campus Police
- ✓ Kate Grimes, JD, MSU-Bozeman Office of Institutional Equity Director and Title IX Coordinator

## **November 2015**

### General SJ 24 Topics

- ✓ Anne Munch
- ✓ Senator Diane Sands (D-Missoula) – Not in Our State conference review
- ✓ Jon Bennion, Deputy Attorney General, DOJ – Sexual or violent offender registry statutes, process, and evaluation for tier assignment

### Montana University System Update on System-wide Adoption of Sexual Assault Investigation Best Practices and Prevention Training

- ✓ Clay Christian, Commissioner of Higher Education, Montana University System, Office of the Commissioner of Higher Education (OCHE)
- ✓ Lucy France, OCHE

### Sex Offender Treatment at Montana State Prison and Community Supervision of Sex Offenders

- ✓ Blair Hopkins, LCPC, Department of Corrections (DOC), Montana State Prison
- ✓ Dawn Handa, DOC, Probation and Parole Division

### Sex Offender Treatment in the Community

- ✓ Andy Hudak, Co-founder and current legislative chair, Montana Sex Offender Treatment Association
- ✓ Mike Sullivan, LCSW
- ✓ Brenda Erdelyi, LCSW

## **March 2016**

### Prevention and Education

- ✓ Kelly Heaton, Executive Director, Domestic and Sexual Violence Services in Red Lodge (DSVS)
- ✓ Travis Burdick, Lead Educator and Program Development, DSVS
- ✓ Beth Wiley, Communications and Development Coordinator, DSVS

- ✓ Dan Murphy, Butte-Silver Bow law enforcement officer
- ✓ Laura Sankey, Staff Attorney, Legislative Services Division (LSD)
- ✓ Karin Olsen Billings, Administrator, Health Enhancement and Safety Division, Office of Public Instruction

#### Review of Montana Statutes and Possible Changes

- ✓ Julianne Burkhardt, Staff Attorney (LSD)
- ✓ Jennifer Streano, Office of the State Public Defender
- ✓ Robin Turner, Public Policy and Legal Director, MCADSV
- ✓ Suzy Boylan, Assistant Chief Deputy, Missoula County Attorney's Office

#### **April 2016**

##### Sexual and Violent Offender Register

- ✓ Jon Bennion, Deputy Attorney General, DOJ
- ✓ Andy Hudak, Montana Sex Offender Treatment Association



## Appendix B: LJIC Letter of Support for DOJ Sexual Assault Evidence Task Force Grant Application



### Law and Justice Interim Committee 64th Montana Legislature

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

#### SENATE MEMBERS

SCOTT SALES--Chair  
DIANE SANDS--Vice Chair  
DOUG KARY  
SUE MALEK  
MARY SHEEHY MOE  
NELS SWANDAL

#### HOUSE MEMBERS

JENNY ECK  
ELLIE BOLDMAN HILL  
SARAH LASZLOFFY  
STEVE LAVIN  
DALE MORTENSEN  
CAROLYN PEASE-LOPEZ

#### COMMITTEE STAFF

RACHEL WEISS, Lead Staff  
JULIANNE BURKHARDT, Staff Attorney  
LAURA SHERLEY, Secretary

March 18, 2016

Denise O'Donnell  
Director, Bureau of Justice Assistance  
810 7th Street NW  
Washington, DC 20531

Dear Ms. O'Donnell,

The Law and Justice Interim Committee has spent the past year studying sexual assault in Montana. This study was requested by the 64th Montana Legislature in Senate Joint Resolution No. 24. As part of the study, committee members learned about sexual assault forensic examinations, including the process of creating, testing, and storing sexual assault evidence kits.

At a March 8 committee meeting, the members were updated on the work of the Sexual Assault Evidence Task Force created by Attorney General Tim Fox, including the task force's application for a National Sexual Assault Kit Initiative grant from the U.S. Department of Justice's Bureau of Justice Assistance.

The majority of the Law and Justice Interim Committee voted to offer the committee's support for the task force's grant proposal. The grant would enable the task force to continue its important work to inventory, track, and test previously unsubmitted evidence kits. The task force's endeavor will help ensure that Montana law enforcement officials and prosecutors can improve responses to sexual assault cases and that these officials and sexual assault crime victims have the resources, information, and support they need to make Montana a safer state.

We hope that you will give favorable consideration to the task force's grant proposal.

Sincerely,

Senator Diane Sands

Vice Chair, Law and Justice Interim Committee  
Sponsor, Senate Joint Resolution No. 24

CI0106 6076rwm